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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd June 2005

No. 5216—li/I(S)-9/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th April 2005 in Industrial Dispute Case No. 55 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s State Livestock Breeding Farm, Chipilima, District Sambalpur and its workmen Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 55 OF 2003

Dated the 28th April 2005

Present :

Shri G. N. Patra, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of
The Joint Director
M/s State Livestock Breeding Farm
Chipilima, At Gosala, P. O. Kalamati
District Sambalpur.

.. First Party—Management

And

- | | |
|---|--------------------------------|
| <p>Its workmen—</p> <ol style="list-style-type: none"> 1. Shri Taranisen Mirdha 2. Shri Hadu Dora and 3. Shri Harish Ch. Das, all are same address, At S. L. B. Farm, Chipilima Gosala, P. O. Kalamati, Dist. Sambalpur. | <p>.. Second Party—Workmen</p> |
|---|--------------------------------|

Appearances :

For the First Party—Management	..	Dr. B. C. Naik, Authorised Representative, S. L. B. Farm, Chipilima.
For the Second Party—Workmen	..	Shri S. C. Sahu, Advocate

AWARD

This is a reference made by the Government of Orissa in Labour & Employment Department, under Section 33-C (2) of the Industrial Disputes Act, 1947, vide memo No. 9661 (6), dated the 1st October 2003 for adjudication as to “whether the termination of services of Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das by way of disengagement from services with effect from the 23rd June 2001 by the Management of State Livestock Breeding Farm, Chipilima is legal and/or justified ? If not, what relief the above workmen are entitled to ?”

2. The case of the second party workmen Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das in brief is that the State Livestock Breeding Farm, Chipilima (hereinafter called the first party management) is an Industry and they are workmen as per the provisions of the Industrial Disputes Act, 1947. That they were working as a daily rated workman under the first party management with effect from the 1st January 1991, the 1st January 1994 and the 1st December 1994 and were continuing as such till the 24th June 2001, the 23rd June 2001 and the 23rd June 2001 respectively. Their services were terminated by the first party management on the 24th June 2001, the 23rd June 2001 and the 23rd June 2001 respectively, in violation of provisions of Section 25-F and 25-O of the Industrial Disputes Act, 1947. They remained unemployed and leading a miserable life due to want of alternative job. That although the first party management is engaging a number of daily wages workmen till today. They have not been given a chance for their reinstatement in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947. Under the above circumstances, the second party workmen pray for their reinstatement in service with full back wages and costs.

3. The first party management contested the case and filed its written statement *inter alia* denying the allegations of the second party workmen. According to the first party management, its establishment is a Research Institution under the Department of Animal Husbandry and Veterinary Services, Orissa but not an Industry, nor the second parties are its workmen. As such this Court has no jurisdiction over the matter. Further it is stated by the first party management that the second party workmen Shri Taranisen Mirdha, Shri Hadu Dora

and Shri Harish Ch. Das were engaged as casual labourers from the 1st January 1991 to the 23rd June 2001, from the 1st January 1994 to the 23rd June 2001 and from the 1st December 1994 to the 23rd June 2001 respectively. Since the second party workmen were engaged after the 12th April 1993, they were disengaged as per the instruction of the Government of Orissa, Finance Department and that taking into account the nature of work on daily wage basis/job, the refusal of employment to the second party workmen cannot be treated as retrenchment. Further according to the first party management due to reduction of strength of Livestock maintained, there was reduction in engagement and that no juniors to the second party workmen are retained in service nor there is any question of fresh appointment. In the circumstances, the first party management prays to dismiss the cases of the second party workmen.

4. On the pleadings of both the parties, the following issues have been framed for adjudication :—

ISSUES

- (i) “Whether the termination of services of Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das by way of disengagement from services with effect from the 23rd June 2001 by the Management of State Livestock Breeding Farm, Chipilima is legal and/or justified ?
- (ii) To what relief, the above workmen are entitled ?”

In course of hearing of the case, the second party workmen examined themselves as W. W. 1, W. W. 2 & W. W. 3 respectively, whereas the first party management declined to adduce any evidence.

FINDINGS

5. *Issue Nos. (i) & (ii)*—Both the issues being interlinked are taken up together for the sake of convenience. The second party workmen have taken the plea that they were engaged by the first party management as a daily rated workmen with effect from the 1st January 1991, the 1st January 1994 and the 1st December 1994 and continued till the 24th June 2001, the 23rd June 2001 and the 23rd June 2001 respectively, whereas, the first party management has taken the stand that the second party workmen Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das were engaged with effect from the 1st January 1991, the 1st January 1994 and, the 1st December 1994 respectively and continued till the 23rd June 2001. The second party workmen Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das examined themselves as W. W. 1, W. W. 2 and W. W. 3 respectively and in their evidence they categorically stated that they were engaged as a daily rated labourer with effect from the 1st January 1991, the 1st January 1994 and the 1st December 1994 respectively. They further deposed that the first party management is selling Cattle, Buffalo, Sheep, Goat, different variety of Grass and Milk. That they were retrenched illegally from service without payment of compensation and after termination, they could not arrange any alternative job inspite of their best effort. The second party workmen further deposed that more than 200 workmen were working in the Farm of the management and that they were illegally retrenched from service, whereas, their juniors are retained. The first party management declined to cross-examine the workmen Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das (W. W. 1, W. W. 2 and W. W. 3 respectively) nor adduced any rebuttal

evidence and therefore, the above assertion of the workmen remain unchallenged. In the circumstances, therefore, I am constrained to hold that the first party management is an Industry as defined under Section 2(j) of the Industrial Disputes Act, 1947 and the second party workmen are working under the first party with effect from the 1st January 1991, the 1st January 1994 and the 1st December 1994 respectively.

It is the settled principles of law that termination of services of a workman for any reason whatsoever constitute retrenchment as defined under Section 2(oo) of the Industrial Disputes Act and non-compliance of mandatory provisions of Section 25-F of the Industrial Disputes Act at the time of retrenchment makes it void *ab initio*. Admittedly the second party workmen were retrenched from service with effect from the 23rd June 2001 and they were not paid any prior notice or notice pay in lieu thereof and retrenchment compensation as per Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 at the time of retrenchment of services of the second party workmen. Therefore, the retrenchment is held to be illegal and inoperative in the eye of law. Consequently, the second party workmen are entitled for their reinstatement in service with continuity and other service benefits. But so far as payment of back wages as prayed by the second party workmen, it is an admitted fact that they were daily wage earner and therefore, their plea that they were unemployed after their termination of service is hard to believe. It is a fit case where the principles of "no work no pay" is to be applied and awarding of back wages will unnecessarily burden the State Exchequer. Consequently, no back wages is to be awarded.

Hence the Award :

The reference is answered on contest with costs. The termination of services of Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das by way of disengagement from services with effect from the 23rd June 2001 by the management of State Livestock Breeding Farm, Chipilima is held to be illegal. The second party workmen are to be reinstated in service with continuity but without any back wages. Management is to pay Rs. 500 (Rupees five hundred) only to each workman Shri Taranisen Mirdha, Shri Hadu Dora and Shri Harish Ch. Das respectively towards costs of litigation.

Dictated and corrected by me

G. N. PATRA
28-4-2005
Presiding Officer
Labour Court, Sambalpur

G. N. PATRA
28-4-2005
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

D. MISHRA

Under-Secretary to Government